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July 1, 2005

Chairman Pat Miller
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Sprint's Response to BellSouth Telecommunication, Inc.'s Motion for Summary Judgment - Docket No. 04-00381

Dear Chairman Miller:

Please find enclosed an original and thirteen (13) copies of Sprint Communications Company, L.P.'s and SprintCom, Inc. d/b/a Sprint PCS's Response to BellSouth Telecommunication, Inc.'s Motion for Summary Judgment in the above-referenced Docket.

Please do not hesitate to contact me if you have any questions concerning this request.

Sincerely yours,

A handwritten signature in cursive script that reads "Edward Phillips".

Edward Phillips

HEP:sm

Enclosures

cc: Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of Sprint's Response to BellSouth Telecommunication, Inc.'s Motion for Summary Judgment upon all parties of record to this Docket by depositing a copy addressed to each in the United States Mail, first-class postage prepaid.

This 1st day of July, 2005.

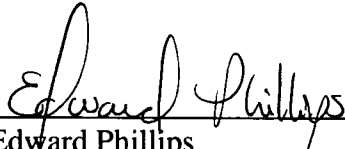
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Edward Phillips
Sprint Communications Company, L.P. and
SprintCom, Inc. d/b/a Sprint PCS

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re

Petition to Establish Generic Docket to Consider
Amendments to Interconnection Agreements
Resulting from Changes of Law

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Docket No 04-00381

SPRINT'S RESPONSE TO BELL SOUTH TELECOMMUNICATION, INC.'S
MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, MOTION
FOR DECLARATORY RULING

Sprint Communications Company L.P and SprintCom, Inc. d/b/a Sprint PCS (hereinafter jointly referred to as "Sprint") submits this Response to the Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling ("*Motion*") filed by BellSouth Telecommunications, Inc. ("BellSouth") with the Tennessee Regulatory Authority ("Authority") on June 1, 2005 in the above-referenced docket, and respectfully requests that the Authority deny BellSouth's Motion to the extent requested below. By offering comments only on the BellSouth arguments identified below, Sprint is not waiving objection to the remainder of the legal arguments included in BellSouth's Motion, and reserves the right to subsequently address BellSouth's other legal arguments if necessary.

Joint Issues Matrix No. 6 -- HDSL Capable Copper Loops – “Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?”

With regard to the Federal Communications Commission’s (“FCC”) impairment thresholds for high capacity loops, such as DS1 loops, and dedicated transport, BellSouth restates the above-referenced issue as “should an HDSL-capable copper loop be counted, for the purpose of determining the number of business lines in a wire center, as one business line, or should it be counted on a 64 kbps equivalency, which means it should be counted as 24 business lines.” *Motion*, at 9. BellSouth answers this question by stating that HDSL-capable copper loops should be counted for purposes of the threshold as 24 business lines, citing footnote 634 of the Triennial Review Order (“TRO”).¹ Sprint has no comment regarding BellSouth’s specific legal argument on counting HDSL-capable copper loops as 24 business lines for purposes of determining whether the “no impairment” threshold has been reached in a particular wire center. Sprint strongly objects, however, to any suggestion that because the non-impairment threshold has been reached in a given wire center with regard to DS1 loops, HDSL-capable copper loops would also be unavailable to CLECs in that wire center. The FCC has never established a specific use restriction involving CLEC access to copper loops for HDSL.² Sprint reads BellSouth’s Motion on HDSL-capable copper loops as not reaching this specific issue.

¹ 18 FCC Rcd 16978, *corrected by errata*, 18 FCC Rcd 19020, *vacated and remanded in part, aff’d in part, USTA v FCC*, 359 F 3d 554 (D C Cir 2004), *cert denied*, 125 S Ct 313 (2004)

² See the following examples of use restrictions included in the FCC’s rules 47 C F R Section 51 309(a) states that an ILEC cannot oppose limitations or restrictions on requests for or the use of UNEs except as provided in Section 51 318 (EEL use restrictions), Section 51 309(b) states that a CLEC cannot use a UNE exclusively for interexchange or mobile wireless services, Section 51 309(c) states that CLECs have exclusive use of a UNE when they lease it and ILECs still have the obligation to maintain, repair or replace,

However, Sprint understands that it is BellSouth's position that a finding of no impairment in a wire center would relieve it of providing HDSL-capable loops in that wire center. To the extent that BellSouth intended to request that the Authority rule as a matter of law that CLECs cannot obtain access to HDSL-capable copper loops in wire centers where the non-impairment threshold for DS1 loops applies, Sprint objects for the reasons herein and asks the Authority to deny summary judgment.

Joint Issues Matrix No. 2 - TRRO Transition Plan - "What is the appropriate language to implement the FCC's transition plan for (1) switching, (2) high capacity loops and (3) dedicated transport as detailed in the FCC's TRRO, issued February 4, 2005?"; Joint Issues Matrix No. 11 - UNEs That are Not Converted - "What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms, and conditions that apply in such circumstances?"

In its *Motion* at pages 47-50, BellSouth discusses its interpretation of the Triennial Review Remand Order ("TRRO")³ with regard to the transition period for former unbundled network elements ("UNEs"). Specifically, BellSouth requests that the Authority declare the transition periods for former UNEs will end on March 10, 2006 or September 10, 2006, depending on the type of former UNE.⁴ Sprint has no comment on BellSouth's legal argument regarding the dates on which the FCC's transition periods for

Section 51.309(d) states that CLECs can use a UNE for any telecommunications service if it is not exclusively being used to provide interexchange or mobile wireless services

³ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313 and CC Docket No. 01-338, *Order on Remand*, FCC 04-290 (released February 4, 2005)

⁴ Sprint assumes for purposes of its Response that BellSouth is not interpreting the March 10, 2006 and September 10, 2006 deadlines as absolute, and that no transition whatsoever will be allowed for wire centers that subsequently attain non-impairment. To the extent BellSouth contends that the deadlines are absolute, Sprint respectfully requests the opportunity to supplement this Response

the initial embedded base of UNEs with a finding of non-impairment end. However, the TRRO does not address transition periods for wire centers that subsequently attain non-impairment status. Accordingly, Sprint objects to BellSouth's proposed abbreviated time period for CLECs to transition affected UNEs to alternate services in those wire centers where BellSouth subsequently demonstrates, wire center by wire center, that the non-impairment threshold has been reached. BellSouth apparently proposes an unworkable 90-day transition period for all UNEs as the thresholds are met in given wire centers. As wire centers and routes subsequently meet the FCC thresholds, thus removing a CLEC's access to unbundled network elements, Sprint believes that the parties can and should apply the transitional language included in the TRRO for the embedded base of affected UNEs. The FCC explicitly established a twelve-month transition for DS1, DS3 loops and DS1 and DS3 transport. The FCC found "that the twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, including decisions where to deploy, purchase, or lease facilities." TRRO, Paragraph 143 (emphasis added). The FCC also established an eighteen-month transition for dark fiber loop and dark fiber transport. The FCC determined that a longer period was warranted for dark fiber since ILECs do not generally offer dark fiber as a tariffed service and "because it may take time for competitive LECs to negotiate IRUs or other arrangements with incumbent or competitive carriers." TRRO, Paragraph 144. Absent new findings or evidence, the Authority should not adopt a different timeline with regard to wire centers or routes that sometime in the future attain non-impairment status. The fact that a CLEC knows the ILEC could declare sometime in the future that the status of a wire center has changed does not provide the type of

advance warning that a CLEC needs to adequately transition UNEs to alternate ILEC services, alternative providers, or self-provided services. The data at the wire center level is not generally available for CLECs to monitor ILEC wire center status, and ILECs typically would not provide any advance warning that non-impairment status was imminent.

Sprint also objects to BellSouth's proposed deadline of ten business days for CLECs to cease ordering the affected UNEs once BellSouth sends notice letters to the carriers that the non-impairment criteria have been met in a given wire center. Under BellSouth's proposal, a carrier could only place new orders after the ten days if it self-certifies that it has conducted an analysis for the wire center in question, and it disagrees with a finding of non-impairment. Sprint believes that a thirty-day period in which CLECs could conduct an analysis is more consistent with the TRRO. The proposed ten-day period would not give Sprint and other CLECs sufficient time to review BellSouth's claim regarding the status of a wire center and determine whether the CLEC will self-certify its disagreement or stop placing orders. As stated above, the data needed to review an ILEC's claim regarding the status of a wire center is not generally available and CLECs may in fact have to request additional information from the ILEC in conducting their "reasonably diligent inquiry". See TRRO, at Paragraph 234. Sufficient time, such as Sprint's proposed thirty-day period, must be provided to allow for correspondence between the parties in resolving these and related issues.

To the extent that BellSouth is requesting in its *Motion* that the Authority rule as a matter of law and adopt all of BellSouth's proposed transition timelines, including the

unrealistic 90-day and 10-day periods discussed above, Sprint requests that the Authority deny BellSouth's request for partial summary judgment on Joint Matrix Issues 2 and 11.

Joint Issues Matrix No. 20(a) - Sub-Loop Concentration – “What is the appropriate ICA language, if any, to address sub-loop feeder or sub-loop concentration?”

Sprint has no comment at this time regarding BellSouth's *Motion* at pages 38-40, dealing with what is now Joint Issues Matrix No. 20(a), Sub Loop Concentration. Sprint wishes to clarify, however, that BellSouth's *Motion* for summary judgment does not address in any way subparts (b) and (c) of Issue 20 as included in the parties' Joint Issues Matrix filed with the Authority on June 29, which involve CLEC access to sub loop in multi-unit premises.⁵ Subsequent to the filing of BellSouth's *Motion* on June 1, subparts (b) and (c) were added at Sprint's request to the regional Joint Issues Matrix. To the extent that BellSouth attempts to amend its original request for summary judgment to include Issues 20(b) and 20(c), Sprint would ask that the Authority deny BellSouth's request, and would at that time request the opportunity to address BellSouth's new legal arguments.

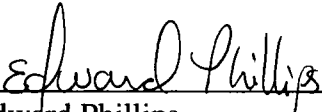
CONCLUSION

WHEREFORE, in recognition of the foregoing, Sprint requests that the Authority adopt all its recommendations in this proceeding and deny BellSouth's *Motion* for summary judgment to the extent requested herein

⁵ See GPSC Docket No 19341-U, Joint Issues Matrix (filed June 29, 2005)

“20 TRO – SUB-LOOP CONCENTRATION a) What is the appropriate ICA language, if any, to address sub loop feeder or sub loop concentration? b) Do the FCC's rules for sub loops for multi-unit premises limit CLEC access to copper facilities only or do they also include access to fiber facilities? c) What are the suitable points of access for sub-loops for multi-unit premises?” (emphasis added)

Respectfully submitted this the 1st day of July, 2005.



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